

1 Budge & Heipt, PLLC
808 E. Roy St.
2 Seattle, WA 98102
(206) 624-3060
3
4
5
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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON

9 THE ESTATE OF CINDY LOU HILL, by
and through its personal representative,
10 Joseph A. Grube,

11 Plaintiff,

12 vs.

13 NAPHCARE, INC, an Alabama
corporation; and SPOKANE COUNTY,
a political subdivision of the State of
14 Washington,

15 Defendants.
16

No. 2:20-cv-00410-MKD

PLAINTIFF'S SUPPLEMENTAL
RESPONSE TO COURT'S QUESTION
AT ORAL ARGUMENT

17 During oral argument on NaphCare's post-trial motions, held on November
18 16, the Court asked Plaintiff's counsel a question regarding the Ninth Circuit's
19 holding in *Gordon v. County of Orange*, 6 F.4th 961 (9th Cir. 2021), and its effect
20 on this case. Plaintiff's counsel, having now reviewed the hearing transcript, realizes

PLAINTIFF'S SUPPLEMENTAL RESPONSE TO
COURT'S QUESTION AT ORAL ARGUMENT

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BUDGE & HEIPT, PLLC
ATTORNEYS AT LAW
808 E. Roy St.
SEATTLE, WA 98102
TELEPHONE: (206) 624-3060

1 the question was different than what he understood it to be at the time and that he
2 failed to provide the Court with a directly responsive answer. Plaintiff's co-counsel
3 attempted to address the question later in the hearing, in the context of the argument
4 on punitive damages. However, given NaphCare's heavy reliance on the *Gordon*
5 case at oral argument and the Court's question, Plaintiff offers this written
6 supplement to its oral response in order to provide the Court with a clearer and more
7 direct answer to its question.

8 The Court asked the following question:

9 But I think there's an issue here in that using law enforcement officers
10 for medical watch I think the Ninth Circuit has said isn't
unconstitutional. . . .

11 So what about NaphCare's policy of using medical watch, you know,
12 takes it out of the realm of what the Court has already found as
13 constitutional so that a jury or the Court could find that it's an
unconstitutional, long-standing policy and practice different from
what's already found to be a constitutional practice?

14 Tr. of Motions Hearing (ECF 310) at 19:23–20:8.

15 **ANSWER:**

16 The constitutionality of an entity's practice of using medically untrained
17 corrections officers to conduct medical watch was not at issue in *Gordon*, and the
18 *Gordon* court made no ruling on the subject. The decedent in that case, who was
19 suffering from opiate withdrawal, died in his jail cell after a physician mistakenly
20 placed him on an alcohol-withdrawal protocol, resulting in his assignment to a

1 regular housing rather than a medical observation unit—a mistake that allegedly
2 deprived him of closer monitoring. *Gordon*, 6 F.4th at 966.

3 One of the plaintiff’s claims was against an individual officer in the regular
4 housing unit who conducted two safety checks that did not comply with jail policy
5 and allowed only limited visibility into the plaintiff’s cell. *Id.* at 966-67. In
6 considering the adequacy of that officer’s safety checks, the Ninth Circuit held as
7 follows: “We now hold that pre-trial detainees do have a right to direct-view safety
8 checks sufficient to determine whether their presentation indicates the need for
9 medical treatment.” *Id.* at 973. The holding, which applied to the jail’s regular safety-
10 check procedure in the regular housing units, established a *minimum* constitutional
11 requirement for the safe confinement of all pretrial jail detainees.

12 This case is not about the regular safety-check procedures at the Spokane
13 County Jail. It is about NaphCare’s practice of using medically untrained jail officers
14 to monitor patients in need of medical monitoring by medical professionals. *See*
15 Instruction No. 31. The *Gordon* court did not address such a practice, much less hold
16 that it is constitutional as a matter of law. Plaintiff is not aware of any judicial
17 opinion, from the Ninth Circuit or elsewhere, holding that such a practice is
18 constitutional.

1 Respectfully submitted this 21st day of November, 2022.

2 **BUDGE & HEIPT, PLLC**

3 s/ Hank Balson

4 Edwin S. Budge, WSBA #24182

5 Hank Balson, WSBA #29250

6 Erik J. Heipt, WSBA #28113

7 hank@budgeandheipt.com

8 ed@budgeandheipt.com

9 erik@budgeandheipt.com

10 (206) 624-3060

11 Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned certifies that on the date stated below this document was filed with the Clerk of the Court for the United States District Court for the Eastern District of Washington, via the CM/ECF system, which will send notification of such filing to the following e-mail addresses:

Ketia B. Wick, WSBA #27219
Erin E. Ehlert, WSBA #26340
Fain Anderson VanDerhoef Rosendahl
701 Fifth Avenue, Suite 4750
Seattle, WA 98104
ketia@favros.com
erine@favros.com
Attorneys for Defendant NaphCare, Inc.

John E. Justice, WSBA #23042
Law, Lyman, Daniel, Kamerrer &
Bogdanovich, P.S.
PO Box 11880
Olympia WA 98508
jjustice@lldkb.com
(360) 754-3480
Attorney for Defendant Spokane
County

Christopher F. Quirk, *pro hac vice*
Edward J. McNelis, III, *pro hac vice*
Sands Anderson, PC
1111 East Main St.
PO Box 1998
Richmond VA 23218
cquirk@sandsanderson.com
emcnelis@sandsanderson.com
Attorneys for Defendant NaphCare, Inc.

David A. Perez, WSA #43959
Eric B. Wolff, WSBA #43047
Michelle L. Maley, WSBA #51318
Perkins Coie LLP
1201 Third Ave., Suite 4900
Seattle, WA 98101
Telephone: +1.206.359.8000
Facsimile: +1.206.359.9000
DPerez@perkinscoie.com
EWolff@perkinscoie.com
Mmaley@perkinscoie.com
Attorneys for Defendant NaphCare, Inc.

Dated this 21st day of November, 2022.

s/ Hank Balson

Hank Balson